

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SYSKO COLUMBIA, LLC

and

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS LOCAL UNION 509

Cases: 10-CA-197586
10-CA-197588
10-CA-203636
10-CA-210623

**SYSKO COLUMBIA, LLC’S
EXCEPTIONS TO ADMINISTRATIVE
LAW JUDGE IRA SANDRON’S DECISION**

Pursuant to Section 102.46 of the National Labor Relations Board’s Rules and Regulations, Sysco Columbia, LLC (“Sysco Columbia”) respectfully files the following exceptions to the August 16, 2018, Decision of Administrative Law Judge (“ALJ”) Ira Sandron (“Decision”).¹

I. Exceptions Applicable to Multiple Findings, Rulings, and Conclusions of the ALJ²

1. To the numerous credibility determinations (D. 4:1-3; 5:1, 26-28, 35; 6:7-9, 13-15, 17-18, 22-23, 28-30, 35-36, 39-40, 42-46; 7:4-5), as these are contrary to the substantial evidence in the record as a whole. (GC 10, 11) (SC 3) (Tr. 163:3-14; 165:4-12; 181:24-182:3; 206:9-18; 236:16-22; 244:14-22; 260:2-5; 285:25-286:4; 324:15-325:7; 326:5-17; 329:1-15; 331:2-4; 338:11-21; 339:4-341:20; 375:6-376:6; 379:12-15; 380:4-11; 382:13-17; 384:1-3; 394:1-12; 395:1-396:4; 397:2-4;

¹ References to the ALJ’s Decision are identified by the letter “D” followed by page and line number, e.g., “D. ____:____.” References to the hearing transcript are by the letters “Tr.” followed by page and line number, e.g., “Tr. ____:____.” References to exhibits introduced by the General Counsel are by the letters “GC” followed by exhibit number, e.g., “GC ____”. References to exhibits introduced Jointly are by the letter “J” followed by exhibit number, e.g., “J ____.” Finally, references to exhibits introduced by Sysco Columbia are by the letters “SC” followed by exhibit number, e.g., “SC ____.”

² Headings and subheading are provided merely as an aid to assist the review of the record and do not qualify or limit the scopes of the exceptions.

406-407; 409:1-16; 411:8-18; 417:6-14; 418:1-2; 424:1-9; 428:1-11; 429:1-5; 431:3-18; 433:1-5; 435:10-17; 460:23-463:24; 464:14-25; 465:1-4; 466:1-25; 477:12-25; 478:4-24; 501:12-25; 657:21-23; 660:9-19; 664:1-3; 666:3-10; 675:4-6; 682:10-15; 686:3-7; 689:11-14; 705:10-706:14; 716:22-717:10; 743:10-14; 805:4-24; 847:13-16; 856:13-25, 870:13-871:15; 928:15-930:6; 930:10-21; 931:11-19; 1026:24-1027:7; 1069:17-1170:11; 1084:1-5; 1085:13-1086:11; 1127-1128; 1129:14-16; 1132:6-12; 1135:20-22; 1141:16-20; 1143:1-8; 1144:15-1145:2; 1146:9-13, 21-25; 1147:1-2, 12-17; 1149:12-1151:18; 1161:11-15; 1168:14-18; 1169:1-5, 23-25; 1170:1-7; 1173:1-14; 1174:1-3, 15-17; 1175:6-10; 1176:5-10; 1213:20-1214:20; 1220:2-6).

2. To the ALJ's decision to credit witnesses who allegedly gave more detailed accounts of alleged meetings or conversations over witnesses who allegedly gave less detailed accounts, as this is contrary to the substantial evidence in the record as a whole. (D. 3:39-41) (Tr. 163:3-14; 165:4-12; 181:24-182:3; 206:9-18; 236:16-22; 244:14-22; 260:2-5; 285:25-286:4; 324:15-325:7; 326:5-17; 329:1-15; 331:2-4; 338:11-21; 339:4-341:20; 375:6-376:6; 379:12-15; 380:4-11; 382:13-17; 384:1-3; 394:1-12; 395:1-396:4; 397:2-4; 406:1-407:25; 409:1-16; 411:8-18; 417:6-14; 418:1-2; 424:1-9; 428:1-11; 429:1-5; 431:3-18; 433:1-5; 435:10-17; 460:23-463:24; 464:14-25; 465:1-4; 466:1-25; 477:12-25; 478:4-24; 501:12-25; 657:21-23; 660:9-19; 664:1-3; 666:3-10; 675:4-6; 682:10-15; 686:3-7; 689:11-14; 705:10-706:14; 716:22-717:10; 743:10-14; 805:4-24; 847:13-16; 856:13-25; 870:13-871:15; 928:15-930:6; 930:10-21; 931:11-19; 1026:24-1027:7; 1069:17-1170:11; 1084:1-5; 1085:13-1086:11; 1127-1128; 1129:14-16; 1132:6-12; 1135:20-22;

1141:16-20; 1143:1-8; 1144:15-1145:2; 1146:9-13, 21-25; 1147:1-2, 12-17; 1149:12-1151:18; 1161:11-15; 1168:14-18; 1169:1-5, 23-25; 1170:1-7; 1173:1-14; 1174:1-3, 15-17; 1175:6-10; 1176:5-10; 1213:20-12:14:20; 1220:2-6).

3. To the numerous determinations based on amorphous concepts of general plausibility, (D. 3:39-41; 5:11-14, 35-37; 6:25-29, 39-40, 42-44), as these are contrary to the substantial evidence in the record as a whole. (Tr. 66:19-67:12; 68:6-75:2; 113:11-131:12; 141:22-25; 150:12-183:2; 194:2-217:4; 223:9-250:6; 255:24-269:9; 274:9-290:5; 310:1-325:13; 329:1-345:7; 370:18-381:9; 389:20-390:10; 399:2-401:9; 448:7-512:2; 517:9-11; 565:2-646:10; 663:14-683:23; 706:15-722:2; 729:1-760:8; 810:5-841:19; 843:16-851:25; 853:22-865:8; 866:21-876:8; 877:24-885:11; 934:21-935:23; 1066:20-1076:23; 1078:25-1090:4; 1092:11-1102:17; 1104:15-1125:6; 1205:1-1222:9).
4. To the improper application of a blanket acceptance of General Counsel's witnesses while discounting Sysco Columbia's witnesses (D. 5:26-38), as this is contrary to the substantial evidence in the record as a whole. (Tr. 192:1-4; 207:2-210:22; 657:21-23; 660:9-19; 664:1-3; 666:3-10; 675:4-6; 676:5-22; 677:16-21; 682:10-15; 686:3-7; 689:11-14; 705:10-706:14).
5. To the failure to follow the Federal Rules of Evidence, including by permitting the General Counsel to enter exhibits into evidence without requiring the General Counsel to properly authenticate the evidence or establish context or foundation

and to relying on such evidence in the ALJ's Decision. (D. 5:13-14; 14:6-10) (Tr. 1195:6-1196:5) (GC 23-42).

6. To the failure to consider large portions of the record by disregarding and ignoring Sysco Columbia's testimony and record evidence. (SC 1- 42) (J 1-20) (Tr. 33:1-86:13; 801:15-841:19; 843:3-851:25; 853:7-865:10; 866:5-876:8; 877:12-885:11; 886:3-911:17; 912:17-1063:13; 1065:20-1076:23; 1077:20-1090:4; 1091:9-1102:15; 1103:11-1125:4; 1126:18-1161:25; 1168:5-1180:14; 1181:10-1194:4; 1204:1-1222:12).
7. To the conclusions of law (D. 26:15-38), as the preponderance of the evidence, much of which is not considered or addressed in the decision, does not support any of those conclusions. (SC 1-42) (Tr. 1-1225).
8. To the ALJ's refusal to permit questions about employees' interpretation of comments made to them by Michael Brawner ("Brawner") and Jim Fix ("Fix"), as such questions have a bearing on the interpretation a "reasonable employee" would accord to such comments and thus should be permitted under the law. (Tr. 364:6-365:8; 505:2-14; 515:18-516:11; 1107:23-1109:7).
9. To the ALJ's refusal to allow questions about the veracity of the factual allegations of the Complaint, erroneously finding that such questions called for a legal conclusion. (Tr. 515:18-516:11).

II. Exceptions Applicable to the ALJ's Findings, Rulings, and Conclusions Regarding the Allegations Involving Brawner

10. To the ALJ's repeated misidentification of Brawner as "Brawley." (D. 2:35; 3:4).
11. To the ALJ's finding that there is no dispute Brawner spoke at "25th hour" meetings with mechanics and spotters from April 10-12, 2017, which is unsupported by the

evidence and by the Decision itself, which decision acknowledges that a Decision and Direction of Election for a unit of mechanics and spotters was not issued until April 21, 2017. (D. 4:6-7; 8:21-22) (Tr. 72:20-73:23; 449:1-9).

12. To the ALJ's reference to the "driver who made the recording," without any evidence on the record to suggest the identity or job title of the person who made the recording. (D. 4:10) (Tr. 101:15-102:15; 140:22-25; 161:23-162:18).
13. To the ALJ's failure to draw an adverse inference from the General Counsel's failure to call the witness who made the alleged secret recording of a meeting where Michael Brawner allegedly spoke. (D.4:35-36; 5:4-14) (Tr. 101:15-102:15; 140:22-25; 161:23-162:18).
14. To the finding that witness Jonathan Brewer "could not be certain" that he attended the meeting allegedly captured by the secret recording, when that witness actually admitted that the recording *could not have been* of the same meeting he attended. (D. 4:11-12) (Tr. 161:23-162:18).
15. To the finding that Brawner and Ronn English's ("English") inability to recognize voices in an unauthenticated and poor quality recording was indicative of a lack of credibility. (D. 4:1-3; 4:18-19; 4:25-27) (Tr. 614:6-618:22; 620:23-626:22; 748:8-749:6; 751:3-10; 752:4-8).
16. To the ALJ allowing the General Counsel to repeatedly question witnesses about an unverified and inadmissible secret recording. (Tr. 610:19-612:6; 634:7-16; 745:10-746:5).
17. To the ALJ's finding that the voices on the recording were those of Brawner, English, and Almetrice Weldon based on the ALJ's own observations, by which

the ALJ essentially authenticated a recording himself instead of requiring the General Counsel to authenticate it, which is contrary to the law. (D. 4:16-17; 5:6-7).

18. To the ALJ's finding that English's testimony should be discounted because he "flippantly" answered that his own voice sounded like "the comedian Ron White," when English was not testifying about his own voice, but about what was alleged to be *Brawner's* voice. (D. 4:22-24) (Tr. 622:7-13).
19. To the finding that Sysco Columbia's lack of objection to a transcript of the DVD played in the course of 25th hour meetings, which the ALJ asked Sysco Columbia's counsel to verify for accuracy, had any bearing on the admissibility of the remaining portions of the recording the General Counsel introduced. (D. 4:28-29) (Tr. 632:6-634:15).
20. To the finding that the tape recording generally tracked the script that the Sysco Columbia used for the 25th hour meetings, as not supported by the record. (D. 4:30-31) (Tr. 622:13-624:9; 625:22-626:15; 745:10-18; 747:11-748:4; 750:11-20).
21. To the finding that Columbia drivers confirmed that Brawner made "certain statements contained in the tape recording," as this is contrary to the record and the ALJ does not cite any evidence in support. (D. 4:32-33) (Tr. 66:19-67:12; 68:6-75:2; 113:11-131:12; 141:22-25; 150:12-183:2; 194:2-217:4; 223:9-250:6; 255:24-269:9; 274:9-290:5; 310:1-325:13; 329:1-345:7; 370:18-381:9; 389:20-390:10; 399:2-401:9; 448:7-464:6; 498:11-502:3; 503:10-22; 511:25-512:2; 517:9-11; 565:2-646:10; 663:14-683:23; 706:15-722:2; 729:1-760:8; 810:5-841:19; 843:16-

851:25; 853:22-865:8; 866:21-876:8; 877:24-885:11; 934:21-935:23; 1066:20-1076:23; 1078:25-1090:4; 1092:11-1102:17; 1104:15-1125:6; 1205:1-1222:9).

22. To the ALJ's interpretation and application of the law regarding admissibility of recordings and to the admission into evidence and reliance upon an unauthenticated recording, without providing Sysco Columbia an opportunity to cross-examine the person who made the recording, which is contrary to the law and the record as a whole. (D. 4:35-5:14; 10:37-11:23) (Tr. 101:9-105:3; 745:10-746:4).
23. To the ALJ's finding that English was evasive and generally exhibited a defensive posture, as this is unsupported by the record. (D. 5:15-19) (Tr. 556:24-631:8).
24. To the ALJ's finding that Brawner was repeatedly vague or evasive, including Brawner's alleged inability to recall certain statements attributed to him, as this is unsupported by the record. (D. 5:22-25) (Tr. 736:2-744:25).
25. To the ALJ's finding that the testimony of General Counsel's witnesses about one-on-one meetings with Brawner was similar in substance and consistent with Brawner's alleged comments at group meetings and that none of the General Counsel's witnesses made any efforts to exaggerate their testimony, as this is unsupported by the record. (D. 5:29-34) (Tr. 379:12-15; 380:6-11; 460:23-463:24; 657:21-23; 660:9-19; 686:3-7; 682:10-15; 664:1-3; 666:3-10; 675:4-6; 705:10-706:14).
26. To the ALJ's finding that Brawner was not a credible witness because he did not specifically address alleged conversations with certain of the General Counsel's witnesses, as this is contrary to the law and the record as a whole. (D. 5:31-33) (Tr. 736:2-744:25).

27. To the ALJ disregarding or discounting witnesses' testimony that their conversations with Brawner were cordial and non-intimidating, which is contrary to the law. (D. 6:1-5) (Tr. 205:23-206:2; 400:7-12; 713:20-24).
28. To the ALJ's decision to credit the testimony of Robert Anderson, despite the inconsistency in his testimony, the overwhelming evidence that he falsely testified about an exhibit, and the fact that his testimony is unsupported by the substantial weight of the record. (D. 6:11-15; 13:6-12; 15:5-14) (Tr. 464:14-15, 20-21; 466:1-25; 477:12-25; 478:4-24; 805:4-24; 1144:15-1145:2; 1149:12-1151:13).
29. To the ALJ's finding that witness John Porter's ("Porter") conversation with Brawner occurred prior to the election, which is contrary to the record, including Porter's own admissions at the hearing and in his confidential National Labor Relation Board ("NLRB") witness affidavit. (D. 6:25-30) (Tr. 192:1-4; 207:2-210:22).
30. To the finding that Rodney Mayers had limited recall, as this is unsupported by the record. (D. 7:1-5) (Tr. 1064:1-1076:23).
31. To the description of shuttle drivers as moving empty trailers to and from Columbia and domicile facility yards, which is contrary to the record. (D. 7:45) (Tr. 254:11-17; 814:21-815:1; 915:13-14; 916:18-25).
32. To the finding that spotters (or maintenance utility worker technicians) work in the fleet shop in Columbia, which is unsupported by the record. (D. 8:4-5) (Tr. 97:1-98:1; 368:8-12; 391:4-19).
33. To the decision to disregard the contents of scripts used by Brawner and others and the content of PowerPoint presentations made to employees, which contained

relevant disclaimers and relevant discussion of Sysco Columbia drivers being paid more than unionized Sysco Atlanta drivers. (D. 9:13-14; 9:31-36) (SC 4-6) (GC 19).

34. To the finding that meetings held by Sysco Columbia during the campaign were mandatory, as this is unsupported by the evidence and further has no legal relevance. (D. 9:27-29) (Tr. 73:24-74:8; 211:16-24; 711:14-18).
35. To the finding that Brawner said he would fix things, as this is unsupported by the record. (D. 10:9-12) (Tr. 605:17-22; 610:4-8; 682:10-15; 743:5-9; 756:20-24; 758:2-5; 845:25-846:10; 846:12-847:6).
36. To the finding that Brawner said he would look into improving pay, supervision, and other benefits, and to the finding that such alleged comments violated the National Labor Relations Act (“NLRA” or the “Act”), as this is contrary to the law and the substantial weight of the record. (D. 10:22-29) (Tr. 338:1-21; 363:12-19; 501:12-17; 593:3-9; 682:10-15; 804:18-23; 856:7-25; 882:12-16; 1070:22-1071:3; 1084:4-7; 1086:1-11; 1099:1-3; 1109:25-1110:4).
37. To the decision to disregard Brawner’s denial of statements attributed to him and inability to recall other statements attributed to him, as this is contrary to the law and the record. (D. 10:32-35).
38. To the finding that Brawner’s alleged recorded comments stated that he could affect drivers’ working conditions, as this is unsupported by the record. (D. 11:13-14) (Tr. 804:2-23).

39. To the decision to allow amendment of the Complaint at trial to allow additional allegations regarding telephonic conversations, as it is contrary to the law. (D. 11:35-3) (Tr. 16:17-18:20).
40. To the ALJ's decision to rely on alleged one-on-one conversations that were not the subject of any Complaint allegations, as it is contrary to the law. (D. 12:5-17).
41. To the ALJ allowing Joshua Taylor ("Taylor") to be questioned as an adverse witness, which is contrary to the law. (Tr. 650:14-653:22; 679:15-680:23; 685:22-686:2).
42. To the finding that the testimony of John Gruber, John Porter, Joshua Taylor, Robert Anderson ("Anderson"), and Carlos Nuttry ("Nuttry") regarding in-person conversations with Brawner was more credible than the testimony of Brawner, as this is contrary to the record. (D. 12:19-13:21) (Tr. 192:1-4; 207:2-210:22; 351:17-24; 354:1-8, 18-24; 355:22-24; 356:2-7; 362:13-17; 363:12-15; 379:12-15; 380:6-11; 460:23-463:24; 657:21-23; 660:9-19; 664:1-3; 666:3-10; 675:4-6; 676:5-22; 677:16-21; 682:10-15; 686:3-7; 689:11-14; 705:10-706:14).
43. To the reliance on the testimony of Nuttry, despite his admission that he tuned out portions of his conversations with Brawner, as this is contrary to the record. (D. 13:14-21) (Tr. 380:6-11).
44. To the ALJ's failure to consider the evidence that Brawner was not employed by Sysco Columbia and that the General Counsel failed to demonstrate he had any authority to effectuate any promises, as this is contrary to the substantial weight of the record. (D. 21:33-35) (Tr. 723:14-18; 726:1-4; 727:21-25; 801:20-22; 802:6-10; 803:21-804:23).

45. To the ALJ's characterization of Sysco Columbia's "corporate structure," including the characterization of Sysco Columbia as "reporting to Sysco Southeast," as this is unsupported by the record. (D. 21:36-38) (Tr. 85:23-86:4; 723:14-724:9; 725:1-2; 727:9-25; 729:21-25; 801:15-802:13; 803:5-8).
46. To the ALJ's finding that Brawner's statements reasonably gave employees the impression that he could influence management decisions relating to their wages, benefits, and working conditions, as this is unsupported by the evidence. (D. 21:39-41) (Tr. 66:19-67:12; 68:6-75:2; 113:11-131:12; 141:22-25; 150:12-183:2; 194:2-217:4; 223:9-250:6; 255:24-269:9; 274:9-290:5; 310:1-325:13; 329:1-345:7; 370:18-381:9; 389:20-390:10; 399:2-401:9; 448:7-464:6; 498:11-502:3; 503:10-22; 511:25-512:2; 517:9-11; 565:2-646:10; 663:14-683:23; 706:15-722:2; 729:1-760:8; 810:5-841:19; 843:16-851:25; 853:22-865:8; 866:21-876:8; 877:24-885:11; 934:21-935:23; 1066:20-1076:23; 1078:25-1090:4; 1092:11-1102:17; 1104:15-1125:6; 1205:1-1222:9).
47. To the ALJ's ruling that Brawner's comments, which amounted to no more than "generalized expressions of an employer's design to make things better," violated the Act, as this is contrary to the law. (D. 22:1-24:27) (Tr. 170:24-171:5; 886:7-8; 887:6-18; 892:10-18; 894:1-896:1; 896:13-23; 898:3-12; 899:13-24; 901:16-22; 903:9-23; 904:6-905:25; 906:1-17; 907:13-23; 911:4-13; 981:8-12; 1182:3-12, 16-22; 1183:15-24; 1184:9-12; 1185:16-25; 1187:5-9).
48. To the ALJ's finding that lawful statements are unlawful in the context of solicitation of employee grievances or complaints, which is contrary to the law. (D. 22:30-31).

49. To the ALJ's failure to consider the evidence regarding Sysco Columbia's past practice of soliciting employee grievances and find that this past practice rendered any alleged solicitation of grievances by Brawner lawful, which is contrary to the law and the substantial weight of the record. (D. 23:8-17) (SC 9-15; 40-41) (Tr. 170:24-171:5; 886:7-8; 887:6-18; 892:10-906:17; 911:4:13; 1182:3-1184:12; 1185:20-26; 1187:3-9).
50. To the ALJ's characterization of Sysco Columbia's past practice of soliciting grievances as being a "general policy of encouraging employees to voluntarily contact management on their own volition," rather than issues actively solicited by supervisors, which is contrary to the substantial weight of the record. (D. 18:17-19; 23:12-14) (Tr. 170:24-171:5; 886:7-8; 887:6-18; 892:10-18; 894:1-896:1; 896:13-23; 898:3-12; 899:13-24; 901:16-22; 903:9-23; 904:6-905:25; 906:1-17; 907:13-23; 911:4-13; 981:8-12; 1182:3-12, 16-22; 1183:15-24; 1184:9-12; 1185:16-25; 1187:5-9) (SC 9-15).
51. To the finding that there was no evidence Brawner had conducted prior group or individual meetings with employees and that his communications with employees were "highly out of the ordinary," which is contrary to the substantial weight of the record and bears no legal relevance. (D. 23:14-17) (Tr. 121:13-15; 190:3-191:7; 311:13-24; 373:20-374:1; 502:18-503:9).
52. To the finding that Brawner unlawfully solicited grievances from employees at the 25th hour meetings, which is contrary to the law and the substantial weight of the record. (D. 23:20-22; 23:26-30) (Tr. 163:3-14; 165:4-12; 170:6-15; 181:24-182:3; 206:9-18; 244:14-22; 285:25-286:3; 324:15-325:7; 338:11-21; 362:5-17; 501:12-

25; 708:7-10; 716:22-717:10; 738:11-16; 743:10-14; 847:13-16; 856:3-25; 870:13-871:15; 1084:1-5; 1085:13-1086:11; 1208:16-22; 1214:23-1215:4; 1220:2-6).

53. To the finding that it is “inconceivable” that drivers would have raised complaints to Brawner had he not solicited them, which is unsupported by the record. (D. 23:23-25) (Tr. 846:24-847:6; 848:19-21; 192:9-193:11; 203:22-204:9; 264:22-265:2).
54. To the finding that it was not material whether Brawner’s statements were connected to specific employee concerns, which is contrary to the law. (D. 23:26-30).
55. To the finding that Brawner solicited complaints and made implied promises of improved benefits in one-on-one conversations, as this is contrary to the substantial weight of the record. (D. 23:32-34) (Tr. 192:1-4; 207:2-210:22; 351:17-24; 354:1-8, 18-24; 355:22-24; 356:2-7; 362:13-17; 363:12-15; 379:12-15; 380:6-11; 460:23-463:24; 657:21-23; 660:9-19; 664:1-3; 666:3-10; 675:4-6; 676:5-22; 677:16-21; 682:10-15; 686:3-7; 689:11-14; 705:10-706:14).
56. To the failure to acknowledge and give weight to the uncontroverted testimony that Brawner never promised any specific improvements to wages or benefits. (D. 23:32-34; 24:1-3) (Tr. 338:1-21; 363:12-19; 501:12-17; 593:3-9; 682:10-15; 804:18-23; 856:7-25; 882:12-16; 1070:22-1071:3; 1084:4-7; 1086:1-11; 1099:1-3; 1109:25-1110:4).
57. To the ALJ’s reliance on his personal doubt as to whether employees would *sua sponte* raise concerns to Brawner, which is unsupported by the record. (D. 23:36-37) (Tr. 192:9-193:11; 203:22-204:9; 264:22-265:2; 846:24-847:6; 848:19-21).

58. To the ALJ's decision to credit Taylor and Nuttry's accounts of their personal conversations with Brawner over Brawner's own testimony. (D. 23:36-40) (Tr. 379:12-15; 380:6-11; 657:21-23; 664:1-3; 666:3-10; 675:4-6; 676:5-22; 677:16-21; 682:10-15; 686:3-7; 689:11-14).
59. To the ALJ's decision to permit questioning about a supervisory position being posted for the Charleston yard, as it is outside the scope of the Complaint and was earlier the subject of a withdrawn charge. (Tr. 666:8-667:20).

III. Exceptions Applicable to the ALJ's Findings, Rulings, and Conclusions Regarding the Allegations involving Fix

60. To the finding that Fix was an agent of Sysco Columbia in discussions with employees, as this is contrary to the law and the substantial weight of the record. (D. 19:17-19, 35-38) (Tr. 428:2-11; 429:2-5; 464:14-465:4; 925:11-24; 928:15-930:25; 931:11-25; 932:15-21; 1127-28; 1129:14-16; 1131:24-25; 1132:6-12; 1135:18-25; 1136:1-6, 18-21; 1139:20-24; 1140:2-10, 22-25; 1141:1-4, 16-20).
61. To the finding that comments made by Fix violated the Act, as it is contrary to the law. (D. 24:19-22).
62. To the decision to credit the testimony of Anderson, Bookert, and Nuttry over Fix because their accounts were allegedly similar in substance, as this is unsupported by the record. (D. 6:31-32) (Tr. 382:13-17; 384:1-3; 394:1-12; 395:1-25; 396:1-4; 397:2-4; 406:1-407:25; 409:1-16; 417:6-14; 418:1-12; 424:1-9; 428:1-11; 429:1-5; 431:3-18; 433:1-5; 435:10-17; 466:1-25; 477:12-25; 478:4-24; 805:4-24; 1144:15-1145:2; 1149:12-1151:18; 1168:14-18; 1169:1-5, 23-25; 1170:1-7; 1173:1-14; 1174:1-3, 15-17; 1175:6-10; 1176:5-10).

63. To the decision to discount Fix's testimony about his conversation with Anderson, as this is unsupported by the record. (D. 6:36-40) (Tr. 1144:15-1145:2; 1149:12-1151:13).
64. To the admission of a General Counsel Exhibit 11, a document Anderson claimed was shown to him by Fix, which was contrary to the law and the substantial weight of the record. (Tr. 480:10-481:25).
65. To the finding that Fix would not have initiated and held conversations with employees about the Union unless he had been vested with actual authority by management, as this is speculative and not supported by any record evidence. (D. 6:41-43; 24:4-6) (Tr. 409:2-12; 430-431; 435-436; 497:15-498:8; 505:15-24; 831:13-15; 841:1-3; 930:10-931:23; 935:24-936:25; 940:6-10; 1141:1-1143:22).
66. To the failure to accord sufficient weight to the evidence that Fix's conversations with his peers about their working conditions and workplace concerns predated his promotion. (D. 13:26-27) (Tr. 497:15-498:8; 1141:1-1143:22).
67. To the failure to consider witness Bookert's sworn affidavit testimony that he regarded his conversations with Fix as being "from a friendship standpoint, rather than a supervisor standpoint." (D. 14:18-23) (Tr. 435:4-13) (SC 3).
68. To the finding that Fix solicited grievances, wrote down what employees told him and that one of those concerns was parking, as this is contrary to the substantial weight of the record. (D. 14:30-35; 24:11-14) (Tr. 382:14-17; 384:4-385:5; 397:2-18).
69. To the ALJ's reliance on the testimony of Anderson, despite Anderson's credibility issues and despite the fact that his testimony was contrary to the substantial weight

of the record. (D. 15:5-14) (Tr. 451:12-19; 464:14-15, 20-21; 466:1-25; 477:12-25; 478:4-24; 499:23-500:15; 1144:15-1145:2; 1149:12-1151:18).

70. To the finding that the General Counsel established by a preponderance of the evidence that Fix was a supervisor under the Act. (D. 19:17-22) (Tr. 428:2-11; 429:2-5; 460:24-463:24; 464:14-465:4; 925:11-24; 928:15-9:30:25; 931:11-25; 932:15-21; 1127-28; 1129:14-16; 1131:24-25; 1132:6-12; 1135:18-25; 1136:1-6, 18-21; 1139:20-24; 1140:2-10, 22-25; 1141:1-4, 16-20).
71. To the finding that Fix exercised supervisory responsibilities while he was a supervisor-in-training, which is contrary to the substantial weight of the record. (D. 19:6-22) (Tr. 428:2-11; 429:2-5; 460:24-463:24; 464:14-465:4; 925:11-24; 928:15-930:25; 931:11-25; 932:15-21; 1127-28; 1129:14-16; 1131:24-25; 1132:6-12; 1135:18-25; 1136:1-6, 18-21; 1139:20-24; 1140:2-10, 22-25; 1141:1-4, 16-20).
72. To the ALJ's attempt to distinguish relevant case law regarding supervisors-in-training, which is contrary to the law. (D. 19:24-32).
73. To the finding that Fix held himself out as a representative of management, asked employees for their concerns, and said he would try to work employees' concerns out, which is not supported by the evidence. (D. 19:37-38) (Tr. 936:8-25; 1142:7-1143:18).
74. To the finding that Fix "expressly or implicitly" said he was speaking on behalf of Sysco Columbia when he spoke with employees and that his comments were similar to Brawner's alleged comments to employees, as this is not supported by the evidence. (D. 24:6-9) (Tr. 936:8-25; 1142:7-1143:18).

75. To the ALJ's conclusion that Fix was given guidelines or instructions on what to say to employees, as this is unsupported by the evidence. (D. 24:9-10) (Tr. 936:8-25).
76. To the finding that Fix asked Anderson if he was happy with everything, stated that if Anderson rescinded his position and employees voted "no," it would help speed things up on getting pay increases and items fixed around the facility, and told Anderson if employees voted in the Union, his hands would be tied, everything would be frozen and employees would be put in status quo, as these findings were contrary to the substantial weight of the evidence. (D. 24:14-18) (Tr. 464:7-466:10; 1142:7-1143:18).
77. To the finding that the General Counsel's allegations about Fix interrogating employees about the impact of Sysco Columbia's alleged promises and suggesting that employees rescind the election process are subsumed by allegations he found meritorious, as it is contrary to the law and the substantial weight of the evidence. (D. 24:24-27) (Tr. 464:7-466:10; 1143:1-4).
78. To the finding that employees told Fix that the parking situation was an issue that was bothering them, as it is contrary to the substantial weight of the record. (D. 20:12-14) (Tr. 1147:18-25; 1148:17-20; 1149:3-5; 1160:16-25; 1175:6-10).
79. To the finding that Sysco Columbia violated the Act by allowing mechanics to park in a different area, which is contrary to the law. (Tr. 1147:18-20, 23-25; 1148:17-20; 1149:3-5; 1160:16-25).

80. To the finding that the change in parking was “designed to diminish employee support for the Union,” which is unsupported by any evidence. (D. 20:17) (Tr. 1147:18-25; 1148:17-20; 1149:3-5; 1160:16-25; 1175:6-10).
81. To the finding that employees considered the change in parking to be a benefit, which is contrary to the substantial weight of the record. (D. 20:11-16) (Tr. 1147:18-25; 1148:17-20; 1149:3-5; 1160:16-25; 1175:6-10).
82. To the finding that the Sysco Columbia offered no legitimate business purpose for the timing of the change of parking, as this is contrary to the law and the substantial weight of the record. (D. 20:23-24) (Tr. 1147:18-25; 1148:17-20; 1149:3-5; 1160:16-25; 1175:6-10).
83. To the finding that evidence of the change of parking merely made mechanics and spotters’ walk to work the equivalent of other employees irrelevant, which is contrary to the law and the substantial weight of the record. (D. 20:24-28) (Tr. 1147:18-25; 1148:17-20; 1149:3-5; 1160:16-25; 1175:6-10).
84. To the ALJ’s failure to apply the Board’s reasoning in *Berkshire Nursing Home, LLC*, 345 NLRB 220, 221 (2005) and uphold the change in parking as lawful. (D. 20:29-36).
85. To the admission of emails sent or received by Fix into evidence without any context or supporting testimony and reliance upon the emails as evidence of the exercise of independent judgment by Fix, as required for Fix to be found a 2(11) supervisor. (D. 14:6-10) (Tr. 1195:6-1196:3).

86. To the consideration of Fix's exclusion from a voter list as evidence of his supervisory status. (D. 14:10-12; 19:13-15) (GC 21) (Tr. 392:20-25; 498:3-5; 781:22-782:6).

IV. Exceptions Applicable to the ALJ's Findings, Rulings, and Conclusions Regarding the DVD Allegations

87. To the ALJ's reliance on inapposite authorities dealing with distinguishable comments about wages being "frozen," not "frozen at the status quo." (D. 21:12-21).

88. To the ALJ's failure to acknowledge and accord weight to the uncontroverted fact that the DVD said wages would be frozen at the status quo, not that wages would be frozen altogether. (D. 9:40-10:6; 21:1-6, 11-13, 29-30) (GC 6 16:8-32:20; 23:15-18).

89. To the ALJ's attempt to distinguish *Mantrose-Hauser Co.*, 306 NLRB 377 (1992) and failure even to address other applicable authorities cited by Sysco Columbia in its brief. (D. 21:22-28).

90. To the ALJ's conclusion that the DVD shown by Sysco Columbia violated the Act, which is contrary to the law and the substantial weight of the record. (D. 21:29-30) (GC 16) (Tr. 20:7-17; 105:21-106:22; 134:19-135:14).

91. To the ALJ's failure to consider the evidence of lawful communications promulgated by Sysco Columbia, which provide clarifying context for the DVD's comment that wages could be frozen at the status quo. (D. 4:30-32; 21:25-28) (SC 6).

V. Exceptions Applicable to the ALJ's Findings, Rulings, and Conclusions Regarding The September 25, 2018, Memorandum to Employees and the Alleged Withholding of a Wage Increase

92. To the failure to consider that Sysco Columbia did not have an automatic practice of granting wage increases. (D. 25:17-18, 34-45) (Tr. 976:22–978:12).
93. To the failure to acknowledge the lack of any evidence that a wage increase had been planned or promised in September 2017. (D. 25:34-45) (Tr. 706:4-7; 904; 976:22 – 978:12; 1215:10-12) (SC19-39).
94. To the failure to consider the lack of any evidence to show that a wage increase would have been granted in the normal course of business in September 2018. (D. 25:22-24) (Tr. 706:4-7; 904; 976:22 – 978:12; 1215:10-12) (SC 19-39).
95. To the failure to consider that Sysco Columbia employees testified their wages had gone down in recent years. (D. 12:21-24) (Tr. 706:4-7; 1215:10-12).
96. To the ALJ’s characterization of Sysco Columbia’s past practice of wage adjustments as “fairly consistent” and statement that Sysco Columbia had a past practice of “normally” granting annual wage increases to employees, which is contrary to the substantial weight of the record. (D. 21:7-8; 25:36-37) (Tr. 799:20-24; 940:17-21; 953:3-11, 20-22; 955:6-7; 962:1-13; 976:2–978:12; 980:23-25; 983:10-14; 985:7-12; 986:14-23; 987:2-10; 988:1-14; 992:12–993:5; 997:17-998:25; 1000:15-16; 1001:10-21; 1002:23–1003:4; 1005:3-25; 1006:6-12; 1007:18-22; 1008:1-10, 21-22; 1009:14-17; 1014:4-6; 1016:19-1018:9; 1019:3-8; 1020:8; 1021:21-22; 1022:16-25; 1028:5-8, 19-24; 1033:22-1034:6; 1036:13-18; 1043:13-1044:7; 1045:7-16; 1046:1-2; 1054:24-1055:9) (SC 19-39).
97. To the finding that Sysco Columbia did not show evidence of a valid business justification for not granting pay increases to employees, as it is contrary to the law and to the substantial weight of the record. (D. 25:17-18) (GC 3).

98. To the findings about the timing of raises for drivers, as it is contrary to the substantial weight of the record. (D. 15:36-38) (Tr. 955:6-7; 962:1-13; 976:2–978:12; 980:23-25; 983:10-14; 985:7-12; 986:14-23; 987:2-10; 988:1-14; 992:12–993:5; 997:17-998:25; 1000:15-16; 1001:10-21; 1002:23–1003:4; 1005:3-25; 1006:6-12; 1007:18-22; 1008:1-10, 21-22; 1009:14-17; 1014:4-6; 1016:19-1018:9; 1019:3-8; 1020:8; 1021:21-22; 1022:16-25; 1028:19-24) (SC 19-39).
99. To the ALJ’s failure to consider the variability of all components and changes to drivers’ compensation, including the elimination of a DriveCam incentive in April 2014. (D. 17:1-32) (Tr. 955:6-7; 962:1-13; 976:2–978:12; 980:23-25; 983:10-14; 985:7-12; 986:14-23; 987:2-10; 988:1-14; 992:12-993:5; 997:17-998:25; 1000:15-16; 1001:10-21; 1002:23–1003:4; 1005:3-25; 1006:6-12; 1007:18-22; 1008:1-10, 21-22; 1009:14-17; 1014:4-6; 1016:19-1018:9; 1019:3-8; 1020:8; 1021:21-22; 1022:16-25; 1028:19-24).
100. To the failure to find that Sysco Columbia maintained the status quo by continuing to adjust driver pay pursuant to the stop reclassification process and mechanics’ pay by their ability to obtain additional certifications. (D. 15:33-34) (Tr. 799:20-24; 904:1-25; 940:19-21; 963:19-964:10; 1054:24-1055:9; 1056:18-1057:4) (SC 15; 18).
101. To the findings about the timing of raises for mechanics and spotters, as it is contrary to the substantial weight of the record. (D. 17:37-38) (Tr. 799:20-24; 940:17-21; 953:3-11, 20-22; 1028:5-8; 1033:22-1034:6; 1036:13-18; 1043:13-1044:7; 1045:7-16; 1046:1-2; 1048:17–1049:8; 1054:24-1056:17).

102. To the ALJ's failure to consider the implementation of pay bands for mechanics and the fact that mechanics within the same job classification received varying wage increases for fiscal year 2016. (D. 17:34-43) (Tr. 1043:13-1044:7; 1046:1-2; 1048:17-1049:8; 1055:20-1056:17) (SC 38).
103. To the ALJ's reliance on wage adjustments received by warehouse employees for fiscal year 2018, as this evidence is irrelevant. (D. 18:7-8; 25:19-20)
104. To the ALJ's erroneous interpretation and application of the United States Court of Appeals for the D.C. Circuit's decision in *Advanced Life Sys., Inc. v. N.L.R.B.*, 898 F.3d 38 (D.C. Cir. 2018). (D. 25:1-9).
105. To the ALJ's decision to essentially apply the burden-shifting framework of *Wright Line*, 251 NLRB 1083 (1980), by stating that the General Counsel's alleged evidence of a past practice of wage increases shifted the burden to Sysco Columbia to show it would have withheld the September wage adjustments regardless of the Union's presence on the scene, while incorrectly stating that *Wright Line* need not be considered. (D. 25:29-32, 42-45).
106. By essentially applying a *Wright Line* analysis to shift the Section 8(a)(3) burdens of proof to Respondent without requiring the General Counsel to establish a *prima facie* case under *Wright Line*. (D. 25:42-45).
107. To the finding that there was no reason for Sysco Columbia not to grant wage increases to drivers whose ballots were impounded, as this is contrary to the law and the substantial weight of the record. (D. 25:27-29) (Tr. 955:6-7; 962:1-13; 976:2-978:12; 980:23-25; 983:10-14; 985:7-12; 986:14-23; 987:2-10; 988:1-14; 992:12-993:5; 997:17-998:25; 1000:15-16; 1001:10-21; 1002:23-1003:4; 1005:3-

25; 1006:6-12; 1007:18-22; 1008:1-10, 21-22; 1009:14-17; 1014:4-6; 1016:19-1018:9; 1019:3-8; 1020:8; 1021:21-22; 1022:16-25; 1028:19-24).

108. To the failure to find that if there was a count of the impounded ballots in the driver election, Sysco Columbia could potentially have faced a retroactive bargaining obligation for the drivers, which would have rendered a unilateral change in September 2017 unlawful under the Act. (D. 25:27-32).
109. To the misleading description of Sysco Columbia's compensation system for drivers as being based on "the Company's evaluation of their performance in carrying out various activities," as it is contrary to the substantial weight of the record. (D. 15:18-25) (Tr. 955:6-7; 962:1-13; 986:14-23; 1003:5-15; 1008:1-10, 16-22).
110. To the ALJ's finding that Sysco Columbia's September 25, 2017, letter to employees did not provide the requisite assurances sufficient to render the communication lawful, as it is contrary to the law and the substantial weight of the record. (D. 24:33-39) (GC 3) (Tr. 82:8-85:22; 638:4-646:19; 1051:19-1063:21).
111. To the ALJ's finding that Sysco Columbia unlawfully attributed its alleged withholding of a wage increase to the Union, as it is contrary to the substantial weight of the record. (D. 25:1-6) (GC 3).
112. To the finding that Sysco Columbia's September 25, 2017 letter to employees gave employees the message that Sysco Columbia was retaliating against them because the Union had filed unfair labor practice charges on their behalves, as it is contrary to the law and the substantial weight of the record. (D. 25:8-10) (GC 3).

113. To the findings that Sysco Columbia’s letter to employees reflected employees’ expectations of, and represented a binding “concession” by Respondent to, a wage increase in September 2017, as this is unsupported by the record. (D. 25:37-40) (GC 3) (Tr. 799:20-24; 940:17-21; 953:3-11, 20-22; 955:6-7; 962:1-13; 976:2–978:12; 980:23-25; 983:10-14; 985:7-12; 986:14-23; 987:2-10; 988:1-14; 992:12 – 993:5; 997:17-998:25; 1000:15-16; 1001:10-21; 1002:23–1003:4; 1005:3-25; 1006:6-12; 1007:18-22; 1008:1-10, 21-22; 1009:14-17; 1014:4-6; 1016:19-1018:9; 1019:3-8; 1020:8; 1021:21-22; 1022:16-25; 1028:5-8, 19-24; 1033:22-1034:6; 1036:13-18; 1043:13-1044:7; 1045:7-16; 1046:1-2; 1054:24-1055:9).
114. To the finding that Sysco Columbia’s letter to employees blamed the Union for the withholding of a wage adjustment and violated the law in doing so, as this is contrary to the law and the record. (D. 25:40-42; 26:1-6) (GC 3).

VI. Exceptions to the Remedy Imposed by the ALJ

115. To the award of backpay, which is contrary to the law and the substantial weight of the record. (D. 27:5-27) (GC 3) (Tr. 799:20-24; 940:17-21; 953:3-11, 20-22; 955:6-7; 962:1-13; 976:2-978:12; 980:23-25; 983:10-14; 985:7-12; 986:14-23; 987:2-10; 988:1-14; 992:12-993:5; 997:17-998:25; 1000:15-16; 1001:10-21; 1002:23–1003:4; 1005:3-25; 1006:6-12; 1007:18-22; 1008:1-10, 21-22; 1009:14-17; 1014:4-6; 1016:19-1018:9; 1019:3-8; 1020:8; 1021:21-22; 1022:16-25; 1028:5-8, 19-24; 1033:22-1034:6; 1036:13-18; 1043:13-1044:7; 1045:7-16; 1046:1-2; 1054:24-1055:9).
116. To the failure of the ALJ to establish a methodology for backpay to be calculated, as this is contrary to the law. (D. 27:9-11).

117. To the finding by the ALJ that wage adjustments warehouse employees received, as well as wage adjustments given to drivers, mechanics, and spotters at other separate Sysco-affiliated operating companies may provide guidance regarding backpay, as this is contrary to the law and unsupported by the record. (D. 27:12-15) (GC 3) (Tr. 799:20-24; 940:17-21; 953:3-11, 20-22; 955:6-7; 962:1-13; 976:2–978:12; 980:23-25; 983:10-14; 985:7-12; 986:14-23; 987:2-10; 988:1-14; 992:12–993:5; 997:17-998:25; 1000:15-16; 1001:10-21; 1002:23–1003:4; 1005:3-25; 1006:6-12; 1007:18-22; 1008:1-10, 21-22; 1009:14-17; 1014:4-6; 1016:19-1018:9; 1019:3-8; 1020:8; 1021:21-22; 1022:16-25; 1028:5-8, 19-24; 1033:22-1034:6; 1036:13-18; 1043:13-1044:7; 1045:7-16; 1046:1-2; 1054:24-1055:9).
118. To the notice-reading requirement, as the award of this remedy is contrary to the law and the substantial weight of the record. (D. 27:34-28:21; 29:40-44) (*See generally* Tr. 1-1225).
119. To the characterization of Brawner as a “particular corporate individual” of Sysco Columbia and the order requiring that he read a notice, as it is contrary to the law and the substantial weight of the record. (D. 27:41-28:6) (*See generally* Tr. 1-1225).
120. To the finding that Sysco Columbia’s alleged postelection conduct justified the notice-reading remedy, as it is not supported by the law or the substantial weight of the record. (D. 28:7-21) (*See generally* Tr. 1-1225).
121. To the imposition of a notice-reading remedy, to be read by Brawner or Propps or in their presence, based on conduct that did not involve Propps at all and post-

election conduct that did not involve Brawner, as it is contrary to the law and the substantial weight of the record. (D. 28:7-21) (*See generally* Tr. 1-1225).

VII. Request For Oral Argument

As discussed more fully in Sysco Columbia's Brief in Support of Exceptions to ALJ's Decision, oral argument will aid the Board's understanding of the voluminous record and numerous issues presented, the broader context in which the evidence should be viewed, and the unique considerations of public interest presented in this case.

VIII. Conclusion

For these reasons, Sysco Columbia respectfully asks that the Amended Complaint, all amendments thereto, and all underlying charges be dismissed in their entirety; that the Exceptions of Sysco Columbia be granted; and that the Decision of the ALJ be reversed.

Respectfully submitted this 28th day of December, 2018.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.



Mark M. Stubley, Esq.
John T. Merrell, Esq.
The Ogletree Building
300 North Main Street
Greenville, SC 29601
864.271.1300 (phone)
864.235.8806 (fax)

Counsel for Sysco Columbia, LLC